

19:44A-20.2

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2004 **CHAPTER:** 19

NJSA: 19:44A-20.2 (Prohibits campaign contributions by certain business entities)

BILL NO: S2 (Substituted for A2)

SPONSOR(S): Kenny and others

DATE INTRODUCED: June 7, 2004

COMMITTEE: **ASSEMBLY:** ---

SENATE: State Government

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 10, 2004

SENATE: June 10, 2004

DATE OF APPROVAL: June 16, 2004

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Original version of bill enacted)

S2

[SPONSOR'S STATEMENT:](#) (Begins on page 8 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

A2

[SPONSOR'S STATEMENT:](#) (Begins on page 8 of original bill) [Yes](#)
Bill and Sponsors Statement identical to S2

COMMITTEE STATEMENT: **[ASSEMBLY:](#)** [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

[GOVERNOR'S PRESS RELEASE ON SIGNING:](#) [Yes](#)

FOLLOWING WERE PRINTED:

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REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

Yes

"Governor signs reform bills; GOP criticizes 'loopholes,'" 6-17-2004, The Times, p.A6

"McGreevey says law 'overdue' as ethics measures take effect," 6-17-2004 Home News Tribune, p.A3

"Governor signs reforms on 'pay-to-play,' lobbying," 6-17-2004 Star Ledger, p.33

"Governor signs ethics reforms into law," 6-17-2004 Home News Tribune, pA3

"McGreevey praises ethics reforms," 6-17-2004 Courier Post, p.A3

"McGreevey signs ethics legislation," 6-17-2004 p.B1

"McGreevey signs 20 reform measures," 6-17-04, The Trentonian.

"McGreevey signs ethics reform measures," 6-17-04, Courier News.

"McGreevey signs ethics-reform bills," 6-17-04, The Press of Atlantic City.

"Ethics, campaign finance reforms become law," 6-17-04, Courier Post, p. 3A.

"McGreevey signs ethics reform bill GOP condemns," 6-17-04, Burlington County Times.

"Local Laws Stronger: Community activists seek governor's veto of pay-to-play bill," 6-17-04, Home News Tribune, p. 3.

§§1-11 -
C.19:44A-20.2
to 19:44A-20.12
§12 - T&E and Note
to §§1-11
§13 -
C.19:44A-11.3a
§15 - Note to §§1-14

P.L. 2004, CHAPTER 19, *approved June 16, 2004*
Senate, No. 2

1 **AN ACT** concerning certain campaign contributions by certain
2 business entities and county political party committees,
3 supplementing P.L.1973, c.83 (C.19:44A-1 et seq.), and amending
4 P.L.1973, c.83.

5

6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8

9 1. (New section) Notwithstanding the provisions of any other law
10 to the contrary:

11 a State agency in the Executive Branch shall not enter into a
12 contract having an anticipated value in excess of \$17,500, as
13 determined in advance and certified in writing by the State agency,
14 with a business entity, except a contract that is awarded pursuant to
15 a fair and open process, if, during the preceding one-year period, that
16 business entity has made a contribution, reportable by the recipient
17 under P.L.1973, c.83 (C.19:44A-1 et seq.), to the State committee of
18 the political party of which the Governor, serving when the contract
19 is awarded, is a member or to any candidate committee of that
20 Governor; and

21 a business entity that has entered into a contract having an
22 anticipated value in excess of \$17,500 with a State agency in the
23 Executive Branch, except a contract that is awarded pursuant to a fair
24 and open process, shall not make a contribution, reportable by the
25 recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to the State
26 committee of the political party of which the Governor, serving when
27 the contract is awarded, is a member or to any candidate committee of
28 that Governor, during the term of that contract.

29 No such committee shall accept such a contribution from a business
30 entity during the term of its contract with a State agency in the
31 Executive Branch.

32

33 2. (New section) Notwithstanding the provisions of any other law
34 to the contrary:

35 a State agency in the Legislative Branch shall not enter into a

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 contract having an anticipated value in excess of \$17,500, as
2 determined in advance and certified in writing by the State agency,
3 with a business entity, that requires approval by a presiding officer of
4 either or both houses of the Legislature, except a contract that is
5 awarded pursuant to a fair and open process, if, during the preceding
6 one-year period, that business entity has made a contribution,
7 reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.),
8 to the State committee of the political party of which that presiding
9 officer, serving when the contract is awarded, is a member or to a
10 legislative leadership committee or any candidate committee
11 established by that presiding officer; and

12 a business entity that has entered into a contract having an
13 anticipated value in excess of \$17,500 with a State agency in the
14 Legislative Branch, that requires approval by a presiding officer of
15 either or both houses of the Legislature, except a contract that is
16 awarded pursuant to a fair and open process, shall not make a
17 contribution, reportable by the recipient under P.L.1973, c.83
18 (C.19:44A-1 et seq.), to the State committee of the political party of
19 which that presiding officer is a member or to a legislative leadership
20 committee or any candidate committee established by that presiding
21 officer, during the term of that contract.

22 No such committee shall accept such a contribution from a business
23 entity during the term of its contract with a State agency in the
24 Legislative Branch.

25

26 3. (New section) Notwithstanding the provisions of any other law
27 to the contrary:

28 a county, or any agency or instrumentality thereof, shall not enter
29 into a contract having an anticipated value in excess of \$17,500, as
30 determined in advance and certified in writing by the county, agency
31 or instrumentality, with a business entity, except a contract that is
32 awarded pursuant to a fair and open process, if, during the preceding
33 one-year period, that business entity has made a contribution that is
34 reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.),
35 to any county committee of a political party in that county if a member
36 of that political party is serving in an elective public office of that
37 county when the contract is awarded or to any candidate committee of
38 any person serving in an elective public office of that county when the
39 contract is awarded; and

40 a business entity that has entered into a contract having an
41 anticipated value in excess of \$17,500 with a county, or any agency or
42 instrumentality thereof, except a contract that is awarded pursuant to
43 a fair and open process, shall not make such a contribution, reportable
44 by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any
45 county committee of a political party in that county if a member of that
46 political party is serving in an elective public office of that county

1 when the contract is awarded or to any candidate committee of any
2 person serving in an elective public office of that county when the
3 contract is awarded, during the term of that contract.

4 No such committee shall accept such a contribution from a business
5 entity during the term of its contract with the county.

6
7 4. (New section) Notwithstanding the provisions of any other law
8 to the contrary:

9 a municipality, or any agency or instrumentality thereof, shall not
10 enter into a contract having an anticipated value in excess of \$17,500,
11 as determined in advance and certified in writing by the municipality,
12 agency or instrumentality, with a business entity, except a contract that
13 is awarded pursuant to a fair and open process, if, during the
14 preceding one-year period, that business entity has made a
15 contribution that is reportable by the recipient under P.L.1973, c.83
16 (C.19:44A-1 et seq.), to any municipal committee of a political party
17 in that municipality if a member of that political party is serving in an
18 elective public office of that municipality when the contract is awarded
19 or to any candidate committee of any person serving in an elective
20 public office of that municipality when the contract is awarded; and

21 a business entity that has entered into a contract having an
22 anticipated value in excess of \$17,500 with a municipality, or any
23 agency or instrumentality thereof, except a contract that is awarded
24 pursuant to a fair and open process, shall not make such a
25 contribution, reportable by the recipient under P.L.1973, c.83
26 (C.19:44A-1 et seq.), to any municipal committee of a political party
27 in that municipality if a member of that political party is serving in an
28 elective public office of that municipality when the contract is awarded
29 or to any candidate committee of any person serving in an elective
30 public office of that municipality when the contract is awarded, during
31 the term of that contract.

32 No such committee shall accept such a contribution from a business
33 entity during the term of its contract with the municipality.

34
35 5. (New section) When a business entity is a natural person, a
36 contribution by that person's spouse or child, residing therewith, shall
37 be deemed to be a contribution by the business entity. When a
38 business entity is other than a natural person, a contribution by any
39 person or other business entity having an interest therein shall be
40 deemed to be a contribution by the business entity.

41
42 6. (New section) As used in sections 1 through 12 of this act:
43 "business entity" means any natural or legal person, business
44 corporation, professional services corporation, limited liability
45 company, partnership, limited partnership, business trust, association
46 or any other legal commercial entity organized under the laws of this

1 State or of any other state or foreign jurisdiction;

2 "interest" means the ownership or control of more than 10% of the
3 profits or assets of a business entity or 10% of the stock in the case of
4 a business entity that is a corporation for profit, as appropriate;

5 "fair and open process" means, at a minimum, that the contract shall
6 be: publicly advertised in newspapers or on the Internet website
7 maintained by the public entity in sufficient time to give notice in
8 advance of the contract; awarded under a process that provides for
9 public solicitation of proposals or qualifications and awarded and
10 disclosed under criteria established in writing by the public entity prior
11 to the solicitation of proposals or qualifications; and publicly opened
12 and announced when awarded. The decision of a public entity as to
13 what constitutes a fair and open process shall be final.

14 "State agency in the Executive Branch" means any of the principal
15 departments in the Executive Branch of the State Government, and
16 any division, board, bureau, office, commission or other
17 instrumentality within or created by such department and any
18 independent State authority, board, commission, instrumentality or
19 agency.

20 "State agency in the Legislative Branch" means the Legislature of
21 the State and any office, board, bureau or commission within or
22 created by the Legislative Branch.

23

24 7. (New section) a. Prior to awarding any contract, except a
25 contract that is not awarded pursuant to a fair and open process, a
26 State agency in the Executive or Legislative Branches, a county, or a
27 municipality shall require the business entity to which the contract is
28 to be awarded to provide a written certification that it has not made a
29 contribution that would bar the award of a contract pursuant to this
30 act.

31 b. A business entity shall have a continuing duty to report to the
32 Election Law Enforcement Commission any contributions that
33 constitute a violation of this act that are made during the duration of
34 a contract.

35

36 8. (New section) If a business entity makes a contribution that
37 would cause it to be ineligible to receive a public contract or, in the
38 case of a contribution made during the term of a public contract, that
39 would constitute a violation of this act, the business entity may
40 request, in writing, within 60 days of the date on which the
41 contribution was made, that the recipient thereof repay the
42 contribution and, if repayment is received within those 60 days, the
43 business entity would again be eligible to receive a contract or would
44 no longer be in violation, as appropriate.

45

46 9. (New section) A business entity which is determined by the

1 Election Law Enforcement Commission to have willfully and
2 intentionally made a contribution or failed to reveal a contribution in
3 violation of this act may be liable to a penalty of up to the value of its
4 contract with the public entity and may be debarred by the State
5 Treasurer from contracting with any public entity for up to five years.

6

7 10. (New section) Any person who is determined by the Election
8 Law Enforcement Commission to have willfully and intentionally
9 accepted a contribution in violation of the provisions of sections 1
10 through 4 of this act shall be liable to a penalty for each such violation
11 equal to the penalties forth in subsection e. of section 22 of P.L.1973,
12 c.83 (C.19:44A-22).

13

14 11. (New section) Nothing contained in this act shall be construed
15 as prohibiting the awarding of a contract when the public exigency
16 requires the immediate delivery of goods or performance of emergency
17 services as determined by the State Treasurer.

18

19 12. (New section) Nothing contained in this act shall be construed
20 as affecting the eligibility of any business entity to perform a public
21 contract because that entity made a contribution to any committee
22 during the one-year period immediately preceding the effective date of
23 this act.

24

25 13. (New section) In addition to any other applicable limit
26 prescribed by law, between January 1 and June 30 of each year, a
27 county committee of a political party shall not make a contribution to
28 any other county committee of a political party, nor shall any such
29 county committee accept a contribution from any other county
30 committee during that time period. In addition to any other penalty
31 provided by law, a county committee that willfully and intentionally
32 violates this section, or willfully and intentionally makes a contribution
33 to any candidate or committee with the intent, condition,
34 understanding or belief that the candidate or committee has made or
35 shall make a contribution to another county committee, shall be liable
36 to a penalty equal to four times the amount of the contribution.

37

38 14. Section 22 of P.L.1973, c.83 (C.19:44A-22) is amended to
39 read as follows:

40 22. a. (1) Except as provided in subsection e. or f., any person,
41 including any candidate, treasurer, candidate committee or joint
42 candidates committee, political committee, continuing political
43 committee, political party committee or legislative leadership
44 committee, charged with the responsibility under the terms of this act
45 for the preparation, certification, filing or retention of any reports,
46 records, notices or other documents, who fails, neglects or omits to

1 prepare, certify, file or retain any such report, record, notice or
2 document at the time or during the time period, as the case may be,
3 and in the manner prescribed by law, or who omits or incorrectly
4 states or certifies any of the information required by law to be included
5 in such report, record, notice or document, any person who proposes
6 to undertake or undertakes a public solicitation, testimonial affair or
7 other activity relating to contributions or expenditures in any way
8 regulated by the provisions of this act who fails to comply with those
9 regulatory provisions, and any other person who in any way violates
10 any of the provisions of this act shall, in addition to any other penalty
11 provided by law, be liable to a penalty of not more than \$3,000.00 for
12 the first offense and not more than \$6,000.00 for the second and each
13 subsequent offense.

14 (2) No person shall willfully and intentionally agree with another
15 person to make a contribution to a candidate, candidate committee,
16 joint candidates committee, political committee, continuing political
17 committee, political party committee, or legislative leadership
18 committee with the intent, or upon the condition, understanding or
19 belief, that the recipient candidate or committee shall make or have
20 made a contribution to another such candidate or committee, but this
21 paragraph shall not be construed to prohibit a county or municipal
22 committee of a political party from making a contribution or
23 contributions to any candidate, candidate committee, joint candidates
24 committee, political committee, continuing political committee,
25 political party committee, or legislative leadership committee. A
26 finding of a violation of this paragraph shall be made only upon clear
27 and convincing evidence. A person who violates the provisions of this
28 paragraph shall be liable to a penalty equal to [~~three~~] four times the
29 amount of the contribution which that person agreed to make to the
30 recipient candidate or committee.

31 b. Upon receiving evidence of any violation of this section, the
32 Election Law Enforcement Commission shall have power to hold, or
33 to cause to be held under the provisions of subsection d. of this
34 section, hearings upon such violation and, upon finding any person to
35 have committed such a violation, to assess such penalty, within the
36 limits prescribed in subsection a. of this section, as it deems proper
37 under the circumstances, which penalty shall be paid forthwith into the
38 State Treasury for the general purposes of the State.

39 c. In assessing any penalty under this section, the Election Law
40 Enforcement Commission may provide for the remission of all or any
41 part of such penalty conditioned upon the prompt correction of any
42 failure, neglect, error or omission constituting the violation for which
43 said penalty was assessed.

44 d. The commission may designate a hearing officer to hear
45 complaints of violations of this act. Such hearing officer shall take
46 testimony, compile a record and make factual findings, and shall

1 submit the same to the commission, which shall have power to assess
2 penalties within the limits and under the conditions prescribed in
3 subsections b. and c. of this section. The commission shall review the
4 record and findings of the hearing officer, but it may also seek such
5 additional testimony as it deems necessary. The commission's
6 determination shall be by majority vote of the entire authorized
7 membership thereof.

8 e. Any person who willfully and intentionally makes or accepts any
9 contribution in violation of section 4 of P.L.1974, c.26 (C.19:44A-29)
10 or section 18, 19 or 20 of P.L.1993, c.65 (C.19:44A-11.3,
11 C.19:44A-11.4 or C.19:44A-11.5), shall be liable to a penalty of:

12 (1) Not more than \$5,000.00 if the cumulative total amount of
13 those contributions is less than or equal to \$5,000.00;

14 (2) Not more than \$75,000.00 if the cumulative total amount of
15 those contributions was more than \$5,000.00 but less than \$75,000;
16 and

17 (3) Not more than \$100,000.00 if the cumulative total amount of
18 those contributions is equal to or more than \$75,000.00.

19 f. In addition to any penalty imposed pursuant to subsection e. of
20 this section, a person holding any elective public office shall forfeit
21 that public office if the Election Law Enforcement Commission
22 determines that the cumulative total amount of the illegal contributions
23 was more than \$50,000.00 and that the violation had a significant
24 impact on the outcome of the election.

25 g. Any penalty prescribed in this section shall be enforced in a
26 summary proceeding under "the penalty enforcement law,"
27 N.J.S.2A:58-1 et seq.

28 (cf: P.L.1993,c.65,s.13)

29

30 15. This act shall take effect on January 1, 2006.

31

32

33

STATEMENT

34

35 The purpose of this bill is to reduce the risk of actual or perceived
36 corruption which may result when public contracts are awarded to
37 business entities that have contributed to elected officials having
38 control, or apparent control, over the awarding of those contracts, or
39 to political party committees at various levels of government that may
40 have influence over the officials responsible for awarding such
41 contracts, a practice commonly referred to as "pay-to-play." At the
42 same time, the bill seeks to respect campaign contributors' rights,
43 guaranteed by the First Amendment, to freedom of speech and
44 freedom of association. Thus, although the limitations imposed under
45 the bill on the ability of government contractors to contribute to
46 candidates, political party committees, and legislative leadership

1 committees may arguably infringe upon First Amendment freedoms,
2 this infringement is justified by the strong State interest in preventing
3 corruption or its appearance. In addition, the means used in this bill
4 to address the "pay-to-play" problem are tailored to avoid unnecessary
5 abridgement of First Amendment rights.

6 This bill limits the eligibility of a business entity that has contributed
7 to elected officials at the State, county, or municipal level, or to a
8 State, county, or municipal political party committee to obtain a public
9 contract from the corresponding unit of government. Specifically, it
10 provides that a State agency in the Executive Branch of State
11 Government will not enter into a contract having an anticipated value
12 in excess of \$17,500 with a business entity, except a contract that is
13 awarded pursuant to a fair and open process, if during the preceding
14 one-year period that business entity has made a contribution
15 (reportable by the recipient under "The Campaign Contributions and
16 Expenditures Reporting Act") to the State committee of the political
17 party of which the Governor, serving when the contract is awarded, is
18 a member or to any candidate committee of that Governor. In
19 addition, a business entity that enters into such a contract with a State
20 agency in the Executive Branch would be prohibited from making a
21 contribution to any of these committees during the term of the
22 contract.

23 Similar provisions applicable to State agencies in the Legislative
24 Branch of State Government would prevent the awarding of any such
25 contract, requiring approval by a presiding officer of either house of
26 the Legislature, to a business entity that has made a contribution
27 during the preceding one year period to the State committee of the
28 political party of which the presiding officer, serving when the contract
29 is awarded, is a member or to a legislative leadership committee or any
30 candidate committee established by that presiding officer. A business
31 entity performing such a contract for a State agency in the Legislative
32 Branch would be prohibited from making a contribution to any of
33 these committees during the term of the contract.

34 In addition, the bill would prohibit a county or municipality from
35 entering into a contract having an anticipated value in excess of
36 \$17,500 with a business entity, except a contract that is awarded
37 pursuant to a fair and open process, if that business entity has made
38 a reportable contribution, in the case of a county to any county
39 committee of a political party in that county if a member of that
40 political party is serving in an elective public office of that county
41 when the contract is awarded or to any candidate committee of any
42 person serving in an elective public office of that county when that
43 contract is awarded and, in the case of a municipality, to any municipal
44 committee of a political party in that municipality if a member of that
45 political party is serving in an elective public office of that municipality
46 when the contract is awarded or to any candidate committee of any

1 person serving in an elective public office of that municipality when
2 that contract is awarded. A business entity that enters into such a
3 contract with a county or municipality would be prohibited from
4 making a contribution to any of these committees during the term of
5 the contract.

6 Each of the aforesaid committees would be prohibited from
7 accepting such a contribution from a business entity during the term
8 of a contract.

9 Under the bill, when a business entity is a natural person, a
10 contribution by that person's spouse or child, residing therewith, will
11 be deemed to be a contribution by the business entity. When a
12 business entity is other than a natural person, a contribution by any
13 person or other business entity having an interest therein will be
14 deemed to be a contribution by the business entity. The bill defines
15 "interest" as the ownership or control of more than 10% of the profits
16 or assets of a business entity or 10% of the stock of a corporation for
17 profit, as appropriate.

18 The bill also provides that:

- 19 * prior to being awarded any contract, a business entity must provide
20 a written certification that it has not knowingly made a contribution
21 that would render it ineligible for a contract under the bill's
22 provisions;
- 23 * a business entity would have a continuing duty to report to the
24 Election Law Enforcement Commission (ELEC) any contributions
25 that constitute a violation of the bill that are made during the
26 duration of a contract;
- 27 * a business entity would have the opportunity to request, in writing,
28 within 60 days of the date on which the contribution was made, that
29 the recipient thereof repay the contribution, and to receive return
30 of the contribution, in order to restore its eligibility to receive a
31 contract or to correct a violation during the duration of a contract;
- 32 * a business entity determined by ELEC to have willfully and
33 knowingly made a contribution in violation of this bill would be
34 liable to a penalty of up to the value of its contract with a public
35 entity and may be debarred by the State Treasurer from contracting
36 with any public entity for up to five years;
- 37 * any person determined by ELEC to have willfully and knowingly
38 accepted a contribution in violation of the bill's provisions would be
39 liable to the penalties provided in current law for campaign
40 contribution violations;
- 41 * contributions made prior to the bill's effective date would not affect
42 the eligibility of any business entity to perform a public contract;
- 43 * nothing contained in the bill would be construed as prohibiting the
44 awarding of a contract when the public exigency requires the
45 immediate delivery of the articles or performance of emergency
46 services as determined by the State Treasurer; and

1 * its provisions would take effect on January 1, 2006.
2 In addition, the bill contains an "anti-wheeling" provision that
3 prohibits a county committee of a political party from making a
4 contribution to any other county committee between January 1 and
5 June 30 of each year. The penalty for violating this provision would
6 be four times the amount of the contribution. The bill also increases
7 the penalty (from three to four times the amount of the contribution)
8 for agreeing to make a contribution to another person with the
9 understanding that the person will make a contribution to a candidate
10 or committee.

SENATE, No. 2

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 7, 2004

Sponsored by:

Senator BERNARD F. KENNY, JR.

District 33 (Hudson)

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

Assemblyman ALFRED E. STEELE

District 35 (Bergen and Passaic)

Co-Sponsored by:

Assemblymen Mayer, Van Drew, McKeon, Assemblywoman Cruz-Perez, Assemblymen R.Smith, Hackett, Greenwald, Assemblywoman Quigley, Assemblyman Stanley, Assemblywoman Oliver, Assemblymen Chiappone, Chivukula, Payne, Fisher, Assemblywoman Previte and Assemblyman Conners

SYNOPSIS

Prohibits campaign contributions by certain business entities performing State, county and local contracts; prohibits certain contributions by county committee of political party.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/11/2004)

1 AN ACT concerning certain campaign contributions by certain
2 business entities and county political party committees,
3 supplementing P.L.1973, c.83 (C.19:44A-1 et seq.), and amending
4 P.L.1973, c.83.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. (New section) Notwithstanding the provisions of any other law
10 to the contrary:

11 a State agency in the Executive Branch shall not enter into a
12 contract having an anticipated value in excess of \$17,500, as
13 determined in advance and certified in writing by the State agency,
14 with a business entity, except a contract that is awarded pursuant to
15 a fair and open process, if, during the preceding one-year period, that
16 business entity has made a contribution, reportable by the recipient
17 under P.L.1973, c.83 (C.19:44A-1 et seq.), to the State committee of
18 the political party of which the Governor, serving when the contract
19 is awarded, is a member or to any candidate committee of that
20 Governor; and

21 a business entity that has entered into a contract having an
22 anticipated value in excess of \$17,500 with a State agency in the
23 Executive Branch, except a contract that is awarded pursuant to a fair
24 and open process, shall not make a contribution, reportable by the
25 recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to the State
26 committee of the political party of which the Governor, serving when
27 the contract is awarded, is a member or to any candidate committee of
28 that Governor, during the term of that contract.

29 No such committee shall accept such a contribution from a business
30 entity during the term of its contract with a State agency in the
31 Executive Branch.

32

33 2. (New section) Notwithstanding the provisions of any other law
34 to the contrary:

35 a State agency in the Legislative Branch shall not enter into a
36 contract having an anticipated value in excess of \$17,500, as
37 determined in advance and certified in writing by the State agency,
38 with a business entity, that requires approval by a presiding officer of
39 either or both houses of the Legislature, except a contract that is
40 awarded pursuant to a fair and open process, if, during the preceding
41 one-year period, that business entity has made a contribution,
42 reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.),
43 to the State committee of the political party of which that presiding

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 officer, serving when the contract is awarded, is a member or to a
2 legislative leadership committee or any candidate committee
3 established by that presiding officer; and

4 a business entity that has entered into a contract having an
5 anticipated value in excess of \$17,500 with a State agency in the
6 Legislative Branch, that requires approval by a presiding officer of
7 either or both houses of the Legislature, except a contract that is
8 awarded pursuant to a fair and open process, shall not make a
9 contribution, reportable by the recipient under P.L.1973, c.83
10 (C.19:44A-1 et seq.), to the State committee of the political party of
11 which that presiding officer is a member or to a legislative leadership
12 committee or any candidate committee established by that presiding
13 officer, during the term of that contract.

14 No such committee shall accept such a contribution from a business
15 entity during the term of its contract with a State agency in the
16 Legislative Branch.

17

18 3. (New section) Notwithstanding the provisions of any other law
19 to the contrary:

20 a county, or any agency or instrumentality thereof, shall not enter
21 into a contract having an anticipated value in excess of \$17,500, as
22 determined in advance and certified in writing by the county, agency
23 or instrumentality, with a business entity, except a contract that is
24 awarded pursuant to a fair and open process, if, during the preceding
25 one-year period, that business entity has made a contribution that is
26 reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.),
27 to any county committee of a political party in that county if a member
28 of that political party is serving in an elective public office of that
29 county when the contract is awarded or to any candidate committee of
30 any person serving in an elective public office of that county when the
31 contract is awarded; and

32 a business entity that has entered into a contract having an
33 anticipated value in excess of \$17,500 with a county, or any agency or
34 instrumentality thereof, except a contract that is awarded pursuant to
35 a fair and open process, shall not make such a contribution, reportable
36 by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any
37 county committee of a political party in that county if a member of that
38 political party is serving in an elective public office of that county
39 when the contract is awarded or to any candidate committee of any
40 person serving in an elective public office of that county when the
41 contract is awarded, during the term of that contract.

42 No such committee shall accept such a contribution from a business
43 entity during the term of its contract with the county.

44

45 4. (New section) Notwithstanding the provisions of any other law
46 to the contrary:

1 a municipality, or any agency or instrumentality thereof, shall not
2 enter into a contract having an anticipated value in excess of \$17,500,
3 as determined in advance and certified in writing by the municipality,
4 agency or instrumentality, with a business entity, except a contract that
5 is awarded pursuant to a fair and open process, if, during the
6 preceding one-year period, that business entity has made a
7 contribution that is reportable by the recipient under P.L.1973, c.83
8 (C.19:44A-1 et seq.), to any municipal committee of a political party
9 in that municipality if a member of that political party is serving in an
10 elective public office of that municipality when the contract is awarded
11 or to any candidate committee of any person serving in an elective
12 public office of that municipality when the contract is awarded; and

13 a business entity that has entered into a contract having an
14 anticipated value in excess of \$17,500 with a municipality, or any
15 agency or instrumentality thereof, except a contract that is awarded
16 pursuant to a fair and open process, shall not make such a
17 contribution, reportable by the recipient under P.L.1973, c.83
18 (C.19:44A-1 et seq.), to any municipal committee of a political party
19 in that municipality if a member of that political party is serving in an
20 elective public office of that municipality when the contract is awarded
21 or to any candidate committee of any person serving in an elective
22 public office of that municipality when the contract is awarded, during
23 the term of that contract.

24 No such committee shall accept such a contribution from a business
25 entity during the term of its contract with the municipality.

26

27 5. (New section) When a business entity is a natural person, a
28 contribution by that person's spouse or child, residing therewith, shall
29 be deemed to be a contribution by the business entity. When a
30 business entity is other than a natural person, a contribution by any
31 person or other business entity having an interest therein shall be
32 deemed to be a contribution by the business entity.

33

34 6. (New section) As used in sections 1 through 12 of this act:
35 "business entity" means any natural or legal person, business
36 corporation, professional services corporation, limited liability
37 company, partnership, limited partnership, business trust, association
38 or any other legal commercial entity organized under the laws of this
39 State or of any other state or foreign jurisdiction;

40 "interest" means the ownership or control of more than 10% of the
41 profits or assets of a business entity or 10% of the stock in the case of
42 a business entity that is a corporation for profit, as appropriate;

43 "fair and open process" means, at a minimum, that the contract shall
44 be: publicly advertised in newspapers or on the Internet website
45 maintained by the public entity in sufficient time to give notice in
46 advance of the contract; awarded under a process that provides for

1 public solicitation of proposals or qualifications and awarded and
2 disclosed under criteria established in writing by the public entity prior
3 to the solicitation of proposals or qualifications; and publicly opened
4 and announced when awarded. The decision of a public entity as to
5 what constitutes a fair and open process shall be final.

6 "State agency in the Executive Branch" means any of the principal
7 departments in the Executive Branch of the State Government, and
8 any division, board, bureau, office, commission or other
9 instrumentality within or created by such department and any
10 independent State authority, board, commission, instrumentality or
11 agency.

12 "State agency in the Legislative Branch" means the Legislature of
13 the State and any office, board, bureau or commission within or
14 created by the Legislative Branch.

15

16 7. (New section) a. Prior to awarding any contract, except a
17 contract that is not awarded pursuant to a fair and open process, a
18 State agency in the Executive or Legislative Branches, a county, or a
19 municipality shall require the business entity to which the contract is
20 to be awarded to provide a written certification that it has not made a
21 contribution that would bar the award of a contract pursuant to this
22 act.

23 b. A business entity shall have a continuing duty to report to the
24 Election Law Enforcement Commission any contributions that
25 constitute a violation of this act that are made during the duration of
26 a contract.

27

28 8. (New section) If a business entity makes a contribution that
29 would cause it to be ineligible to receive a public contract or, in the
30 case of a contribution made during the term of a public contract, that
31 would constitute a violation of this act, the business entity may
32 request, in writing, within 60 days of the date on which the
33 contribution was made, that the recipient thereof repay the
34 contribution and, if repayment is received within those 60 days, the
35 business entity would again be eligible to receive a contract or would
36 no longer be in violation, as appropriate.

37

38 9. (New section) A business entity which is determined by the
39 Election Law Enforcement Commission to have willfully and
40 intentionally made a contribution or failed to reveal a contribution in
41 violation of this act may be liable to a penalty of up to the value of its
42 contract with the public entity and may be debarred by the State
43 Treasurer from contracting with any public entity for up to five years.

44

45 10. (New section) Any person who is determined by the Election
46 Law Enforcement Commission to have willfully and intentionally

1 accepted a contribution in violation of the provisions of sections 1
2 through 4 of this act shall be liable to a penalty for each such violation
3 equal to the penalties forth in subsection e. of section 22 of P.L.1973,
4 c.83 (C.19:44A-22).

5
6 11. (New section) Nothing contained in this act shall be construed
7 as prohibiting the awarding of a contract when the public exigency
8 requires the immediate delivery of goods or performance of emergency
9 services as determined by the State Treasurer.

10
11 12. (New section) Nothing contained in this act shall be construed
12 as affecting the eligibility of any business entity to perform a public
13 contract because that entity made a contribution to any committee
14 during the one-year period immediately preceding the effective date of
15 this act.

16
17 13. (New section) In addition to any other applicable limit
18 prescribed by law, between January 1 and June 30 of each year, a
19 county committee of a political party shall not make a contribution to
20 any other county committee of a political party, nor shall any such
21 county committee accept a contribution from any other county
22 committee during that time period. In addition to any other penalty
23 provided by law, a county committee that willfully and intentionally
24 violates this section, or willfully and intentionally makes a contribution
25 to any candidate or committee with the intent, condition,
26 understanding or belief that the candidate or committee has made or
27 shall make a contribution to another county committee, shall be liable
28 to a penalty equal to four times the amount of the contribution.

29
30 14. Section 22 of P.L.1973, c.83 (C.19:44A-22) is amended to
31 read as follows:

32 22. a. (1) Except as provided in subsection e. or f., any person,
33 including any candidate, treasurer, candidate committee or joint
34 candidates committee, political committee, continuing political
35 committee, political party committee or legislative leadership
36 committee, charged with the responsibility under the terms of this act
37 for the preparation, certification, filing or retention of any reports,
38 records, notices or other documents, who fails, neglects or omits to
39 prepare, certify, file or retain any such report, record, notice or
40 document at the time or during the time period, as the case may be,
41 and in the manner prescribed by law, or who omits or incorrectly
42 states or certifies any of the information required by law to be included
43 in such report, record, notice or document, any person who proposes
44 to undertake or undertakes a public solicitation, testimonial affair or
45 other activity relating to contributions or expenditures in any way
46 regulated by the provisions of this act who fails to comply with those

1 regulatory provisions, and any other person who in any way violates
2 any of the provisions of this act shall, in addition to any other penalty
3 provided by law, be liable to a penalty of not more than \$3,000.00 for
4 the first offense and not more than \$6,000.00 for the second and each
5 subsequent offense.

6 (2) No person shall willfully and intentionally agree with another
7 person to make a contribution to a candidate, candidate committee,
8 joint candidates committee, political committee, continuing political
9 committee, political party committee, or legislative leadership
10 committee with the intent, or upon the condition, understanding or
11 belief, that the recipient candidate or committee shall make or have
12 made a contribution to another such candidate or committee, but this
13 paragraph shall not be construed to prohibit a county or municipal
14 committee of a political party from making a contribution or
15 contributions to any candidate, candidate committee, joint candidates
16 committee, political committee, continuing political committee,
17 political party committee, or legislative leadership committee. A
18 finding of a violation of this paragraph shall be made only upon clear
19 and convincing evidence. A person who violates the provisions of this
20 paragraph shall be liable to a penalty equal to ~~[three]~~ four times the
21 amount of the contribution which that person agreed to make to the
22 recipient candidate or committee.

23 b. Upon receiving evidence of any violation of this section, the
24 Election Law Enforcement Commission shall have power to hold, or
25 to cause to be held under the provisions of subsection d. of this
26 section, hearings upon such violation and, upon finding any person to
27 have committed such a violation, to assess such penalty, within the
28 limits prescribed in subsection a. of this section, as it deems proper
29 under the circumstances, which penalty shall be paid forthwith into the
30 State Treasury for the general purposes of the State.

31 c. In assessing any penalty under this section, the Election Law
32 Enforcement Commission may provide for the remission of all or any
33 part of such penalty conditioned upon the prompt correction of any
34 failure, neglect, error or omission constituting the violation for which
35 said penalty was assessed.

36 d. The commission may designate a hearing officer to hear
37 complaints of violations of this act. Such hearing officer shall take
38 testimony, compile a record and make factual findings, and shall
39 submit the same to the commission, which shall have power to assess
40 penalties within the limits and under the conditions prescribed in
41 subsections b. and c. of this section. The commission shall review the
42 record and findings of the hearing officer, but it may also seek such
43 additional testimony as it deems necessary. The commission's
44 determination shall be by majority vote of the entire authorized
45 membership thereof.

46 e. Any person who willfully and intentionally makes or accepts any

1 contribution in violation of section 4 of P.L.1974, c.26 (C.19:44A-29)
2 or section 18, 19 or 20 of P.L.1993, c.65 (C.19:44A-11.3,
3 C.19:44A-11.4 or C.19:44A-11.5), shall be liable to a penalty of:

4 (1) Not more than \$5,000.00 if the cumulative total amount of
5 those contributions is less than or equal to \$5,000.00;

6 (2) Not more than \$75,000.00 if the cumulative total amount of
7 those contributions was more than \$5,000.00 but less than \$75,000;
8 and

9 (3) Not more than \$100,000.00 if the cumulative total amount of
10 those contributions is equal to or more than \$75,000.00.

11 f. In addition to any penalty imposed pursuant to subsection e. of
12 this section, a person holding any elective public office shall forfeit
13 that public office if the Election Law Enforcement Commission
14 determines that the cumulative total amount of the illegal contributions
15 was more than \$50,000.00 and that the violation had a significant
16 impact on the outcome of the election.

17 g. Any penalty prescribed in this section shall be enforced in a
18 summary proceeding under "the penalty enforcement law,"
19 N.J.S.2A:58-1 et seq.

20 (cf: P.L.1993,c.65,s.13)

21

22 15. This act shall take effect on January 1, 2006.

23

24

25

STATEMENT

26

27 The purpose of this bill is to reduce the risk of actual or perceived
28 corruption which may result when public contracts are awarded to
29 business entities that have contributed to elected officials having
30 control, or apparent control, over the awarding of those contracts, or
31 to political party committees at various levels of government that may
32 have influence over the officials responsible for awarding such
33 contracts, a practice commonly referred to as "pay-to-play." At the
34 same time, the bill seeks to respect campaign contributors' rights,
35 guaranteed by the First Amendment, to freedom of speech and
36 freedom of association. Thus, although the limitations imposed under
37 the bill on the ability of government contractors to contribute to
38 candidates, political party committees, and legislative leadership
39 committees may arguably infringe upon First Amendment freedoms,
40 this infringement is justified by the strong State interest in preventing
41 corruption or its appearance. In addition, the means used in this bill
42 to address the "pay-to-play" problem are tailored to avoid unnecessary
43 abridgement of First Amendment rights.

44 This bill limits the eligibility of a business entity that has contributed
45 to elected officials at the State, county, or municipal level, or to a
46 State, county, or municipal political party committee to obtain a public

1 contract from the corresponding unit of government. Specifically, it
2 provides that a State agency in the Executive Branch of State
3 Government will not enter into a contract having an anticipated value
4 in excess of \$17,500 with a business entity, except a contract that is
5 awarded pursuant to a fair and open process, if during the preceding
6 one-year period that business entity has made a contribution
7 (reportable by the recipient under "The Campaign Contributions and
8 Expenditures Reporting Act") to the State committee of the political
9 party of which the Governor, serving when the contract is awarded, is
10 a member or to any candidate committee of that Governor. In
11 addition, a business entity that enters into such a contract with a State
12 agency in the Executive Branch would be prohibited from making a
13 contribution to any of these committees during the term of the
14 contract.

15 Similar provisions applicable to State agencies in the Legislative
16 Branch of State Government would prevent the awarding of any such
17 contract, requiring approval by a presiding officer of either house of
18 the Legislature, to a business entity that has made a contribution
19 during the preceding one year period to the State committee of the
20 political party of which the presiding officer, serving when the contract
21 is awarded, is a member or to a legislative leadership committee or any
22 candidate committee established by that presiding officer. A business
23 entity performing such a contract for a State agency in the Legislative
24 Branch would be prohibited from making a contribution to any of
25 these committees during the term of the contract.

26 In addition, the bill would prohibit a county or municipality from
27 entering into a contract having an anticipated value in excess of
28 \$17,500 with a business entity, except a contract that is awarded
29 pursuant to a fair and open process, if that business entity has made
30 a reportable contribution, in the case of a county to any county
31 committee of a political party in that county if a member of that
32 political party is serving in an elective public office of that county
33 when the contract is awarded or to any candidate committee of any
34 person serving in an elective public office of that county when that
35 contract is awarded and, in the case of a municipality, to any municipal
36 committee of a political party in that municipality if a member of that
37 political party is serving in an elective public office of that municipality
38 when the contract is awarded or to any candidate committee of any
39 person serving in an elective public office of that municipality when
40 that contract is awarded. A business entity that enters into such a
41 contract with a county or municipality would be prohibited from
42 making a contribution to any of these committees during the term of
43 the contract.

44 Each of the aforesaid committees would be prohibited from
45 accepting such a contribution from a business entity during the term
46 of a contract.

1 Under the bill, when a business entity is a natural person, a
2 contribution by that person's spouse or child, residing therewith, will
3 be deemed to be a contribution by the business entity. When a
4 business entity is other than a natural person, a contribution by any
5 person or other business entity having an interest therein will be
6 deemed to be a contribution by the business entity. The bill defines
7 "interest" as the ownership or control of more than 10% of the profits
8 or assets of a business entity or 10% of the stock of a corporation for
9 profit, as appropriate.

10 The bill also provides that:

- 11 * prior to being awarded any contract, a business entity must provide
12 a written certification that it has not knowingly made a contribution
13 that would render it ineligible for a contract under the bill's
14 provisions;
- 15 * a business entity would have a continuing duty to report to the
16 Election Law Enforcement Commission (ELEC) any contributions
17 that constitute a violation of the bill that are made during the
18 duration of a contract;
- 19 * a business entity would have the opportunity to request, in writing,
20 within 60 days of the date on which the contribution was made, that
21 the recipient thereof repay the contribution, and to receive return
22 of the contribution, in order to restore its eligibility to receive a
23 contract or to correct a violation during the duration of a contract;
- 24 * a business entity determined by ELEC to have willfully and
25 knowingly made a contribution in violation of this bill would be
26 liable to a penalty of up to the value of its contract with a public
27 entity and may be debarred by the State Treasurer from contracting
28 with any public entity for up to five years;
- 29 * any person determined by ELEC to have willfully and knowingly
30 accepted a contribution in violation of the bill's provisions would be
31 liable to the penalties provided in current law for campaign
32 contribution violations;
- 33 * contributions made prior to the bill's effective date would not affect
34 the eligibility of any business entity to perform a public contract;
- 35 * nothing contained in the bill would be construed as prohibiting the
36 awarding of a contract when the public exigency requires the
37 immediate delivery of the articles or performance of emergency
38 services as determined by the State Treasurer; and
- 39 * its provisions would take effect on January 1, 2006.

40 In addition, the bill contains an "anti-wheeling" provision that
41 prohibits a county committee of a political party from making a
42 contribution to any other county committee between January 1 and
43 June 30 of each year. The penalty for violating this provision would
44 be four times the amount of the contribution. The bill also increases

S2 KENNY

11

- 1 the penalty (from three to four times the amount of the contribution)
- 2 for agreeing to make a contribution to another person with the
- 3 understanding that the person will make a contribution to a candidate
- 4 or committee.

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 2

STATE OF NEW JERSEY

DATED: JUNE 3, 2004

The Senate State Government Committee reports favorably Senate Bill No. 2.

This bill limits the eligibility of a business entity that has contributed to elected officials at the State, county, or municipal level, or to a State, county, or municipal political party committee to obtain a public contract from the corresponding unit of government. Specifically, it provides that a State agency in the Executive Branch of State Government will not enter into a contract having an anticipated value in excess of \$17,500 with a business entity, except a contract that is awarded pursuant to a fair and open process, if during the preceding one-year period that business entity has made a contribution (reportable by the recipient under "The Campaign Contributions and Expenditures Reporting Act") to the State committee of the political party of which the Governor, serving when the contract is awarded, is a member or to any candidate committee of that Governor. In addition, a business entity that enters into such a contract with a State agency in the Executive Branch would be prohibited from making a contribution to any of these committees during the term of the contract.

Similar provisions applicable to State agencies in the Legislative Branch of State Government would prevent the awarding of any such contract, requiring approval by a presiding officer of either house of the Legislature, to a business entity that has made a contribution during the preceding one year period to the State committee of the political party of which the presiding officer, serving when the contract is awarded, is a member or to a legislative leadership committee or any candidate committee established by that presiding officer. A business entity performing such a contract for a State agency in the Legislative Branch would be prohibited from making a contribution to any of these committees during the term of the contract.

In addition, the bill would prohibit a county or municipality from entering into a contract having an anticipated value in excess of \$17,500 with a business entity, except a contract that is awarded pursuant to a fair and open process, if that business entity has made a reportable contribution, in the case of a county to any county committee of a political party in that county if a member of that political party is serving in an elective public office of that county

when the contract is awarded or to any candidate committee of any person serving in an elective public office of that county when that contract is awarded and, in the case of a municipality, to any municipal committee of a political party in that municipality if a member of that political party is serving in an elective public office of that municipality when the contract is awarded or to any candidate committee of any person serving in an elective public office of that municipality when that contract is awarded. A business entity that enters into such a contract with a county or municipality would be prohibited from making a contribution to any of these committees during the term of the contract.

Each of the aforesaid committees would be prohibited from accepting such a contribution from a business entity during the term of a contract.

Under the bill, when a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, will be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein will be deemed to be a contribution by the business entity. The bill defines "interest" as the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock of a corporation for profit, as appropriate.

The bill also provides that:

- * prior to being awarded any contract, a business entity must provide a written certification that it has not knowingly made a contribution that would render it ineligible for a contract under the bill's provisions;
- * a business entity would have a continuing duty to report to the Election Law Enforcement Commission (ELEC) any contributions that constitute a violation of the bill that are made during the duration of a contract;
- * a business entity would have the opportunity to request, in writing, within 60 days of the date on which the contribution was made, that the recipient thereof repay the contribution, and to receive return of the contribution, in order to restore its eligibility to receive a contract or to correct a violation during the duration of a contract;
- * a business entity determined by ELEC to have willfully and knowingly made a contribution in violation of this bill would be liable to a penalty of up to the value of its contract with a public entity and may be debarred by the State Treasurer from contracting with any public entity for up to five years;
- * any person determined by ELEC to have willfully and knowingly accepted a contribution in violation of the bill's provisions would be liable to the penalties provided in current law for campaign contribution violations;
- * contributions made prior to the bill's effective date will not affect

- the eligibility of any business entity to perform a public contract;
- * nothing contained in the bill will be construed as prohibiting the awarding of a contract when the public exigency requires the immediate delivery of the articles or performance of emergency services as determined by the State Treasurer; and
 - * its provisions will take effect on January 1, 2006.

In addition, the bill contains an "anti-wheeling" provision that prohibits a county committee of a political party from making a contribution to any other county committee between January 1 and June 30 of each year. The penalty for violating this provision would be four times the amount of the contribution. The bill also increases the penalty (from three to four times the amount of the contribution) for agreeing to make a contribution to another person with the understanding that the person will make a contribution to a candidate or committee.

This bill is identical to Assembly, No. 2 of 2004.

ASSEMBLY, No. 2

STATE OF NEW JERSEY

211th LEGISLATURE

INTRODUCED JUNE 3, 2004

Sponsored by:

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

Co-Sponsored by:

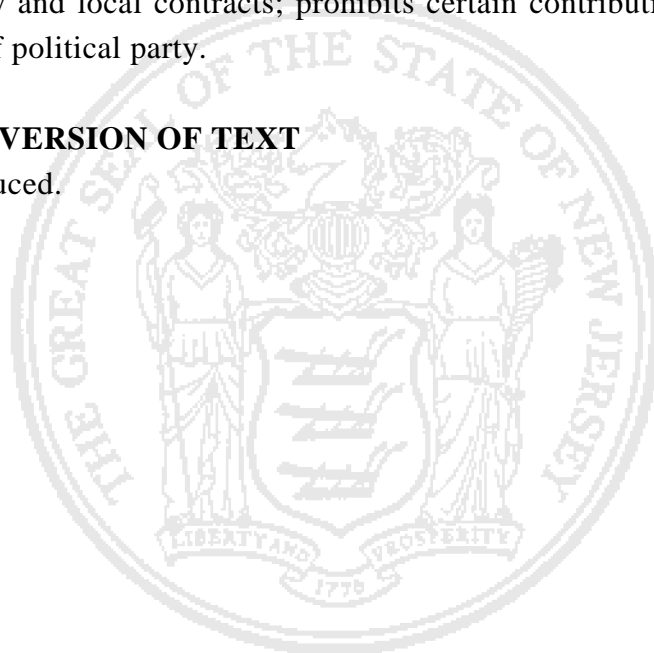
**Assemblymen Mayer, Van Drew, McKeon, Assemblywoman Cruz-Perez,
Assemblymen R.Smith, Hackett, Assemblywoman Greenstein,
Assemblyman Greenwald, Assemblywoman Quigley, Assemblyman
Stanley, Assemblywoman Oliver, Assemblymen Chiappone, Chivukula,
Payne and Fisher**

SYNOPSIS

Prohibits campaign contributions by certain business entities performing State, county and local contracts; prohibits certain contributions by county committee of political party.

CURRENT VERSION OF TEXT

As introduced.



A2 WEINBERG

2

1 AN ACT concerning certain campaign contributions by certain
2 business entities and county political party committees,
3 supplementing P.L.1973, c.83 (C.19:44A-1 et seq.), and amending
4 P.L.1973, c.83.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. (New section) Notwithstanding the provisions of any other law
10 to the contrary:

11 a State agency in the Executive Branch shall not enter into a
12 contract having an anticipated value in excess of \$17,500, as
13 determined in advance and certified in writing by the State agency,
14 with a business entity, except a contract that is awarded pursuant to
15 a fair and open process, if, during the preceding one-year period, that
16 business entity has made a contribution, reportable by the recipient
17 under P.L.1973, c.83 (C.19:44A-1 et seq.), to the State committee of
18 the political party of which the Governor, serving when the contract
19 is awarded, is a member or to any candidate committee of that
20 Governor; and

21 a business entity that has entered into a contract having an
22 anticipated value in excess of \$17,500 with a State agency in the
23 Executive Branch, except a contract that is awarded pursuant to a fair
24 and open process, shall not make a contribution, reportable by the
25 recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to the State
26 committee of the political party of which the Governor, serving when
27 the contract is awarded, is a member or to any candidate committee of
28 that Governor, during the term of that contract.

29 No such committee shall accept such a contribution from a business
30 entity during the term of its contract with a State agency in the
31 Executive Branch.

32

33 2. (New section) Notwithstanding the provisions of any other law
34 to the contrary:

35 a State agency in the Legislative Branch shall not enter into a
36 contract having an anticipated value in excess of \$17,500, as
37 determined in advance and certified in writing by the State agency,
38 with a business entity, that requires approval by a presiding officer of
39 either or both houses of the Legislature, except a contract that is
40 awarded pursuant to a fair and open process, if, during the preceding
41 one-year period, that business entity has made a contribution,
42 reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.),
43 to the State committee of the political party of which that presiding

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 officer, serving when the contract is awarded, is a member or to a
2 legislative leadership committee or any candidate committee
3 established by that presiding officer; and

4 a business entity that has entered into a contract having an
5 anticipated value in excess of \$17,500 with a State agency in the
6 Legislative Branch, that requires approval by a presiding officer of
7 either or both houses of the Legislature, except a contract that is
8 awarded pursuant to a fair and open process, shall not make a
9 contribution, reportable by the recipient under P.L.1973, c.83
10 (C.19:44A-1 et seq.), to the State committee of the political party of
11 which that presiding officer is a member or to a legislative leadership
12 committee or any candidate committee established by that presiding
13 officer, during the term of that contract.

14 No such committee shall accept such a contribution from a business
15 entity during the term of its contract with a State agency in the
16 Legislative Branch.

17

18 3. (New section) Notwithstanding the provisions of any other law
19 to the contrary:

20 a county, or any agency or instrumentality thereof, shall not enter
21 into a contract having an anticipated value in excess of \$17,500, as
22 determined in advance and certified in writing by the county, agency
23 or instrumentality, with a business entity, except a contract that is
24 awarded pursuant to a fair and open process, if, during the preceding
25 one-year period, that business entity has made a contribution that is
26 reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.),
27 to any county committee of a political party in that county if a member
28 of that political party is serving in an elective public office of that
29 county when the contract is awarded or to any candidate committee of
30 any person serving in an elective public office of that county when the
31 contract is awarded; and

32 a business entity that has entered into a contract having an
33 anticipated value in excess of \$17,500 with a county, or any agency or
34 instrumentality thereof, except a contract that is awarded pursuant to
35 a fair and open process, shall not make such a contribution, reportable
36 by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any
37 county committee of a political party in that county if a member of that
38 political party is serving in an elective public office of that county
39 when the contract is awarded or to any candidate committee of any
40 person serving in an elective public office of that county when the
41 contract is awarded, during the term of that contract.

42 No such committee shall accept such a contribution from a business
43 entity during the term of its contract with the county.

44

45 4. (New section) Notwithstanding the provisions of any other law
46 to the contrary:

1 a municipality, or any agency or instrumentality thereof, shall not
2 enter into a contract having an anticipated value in excess of \$17,500,
3 as determined in advance and certified in writing by the municipality,
4 agency or instrumentality, with a business entity, except a contract that
5 is awarded pursuant to a fair and open process, if, during the
6 preceding one-year period, that business entity has made a
7 contribution that is reportable by the recipient under P.L.1973, c.83
8 (C.19:44A-1 et seq.), to any municipal committee of a political party
9 in that municipality if a member of that political party is serving in an
10 elective public office of that municipality when the contract is awarded
11 or to any candidate committee of any person serving in an elective
12 public office of that municipality when the contract is awarded; and

13 a business entity that has entered into a contract having an
14 anticipated value in excess of \$17,500 with a municipality, or any
15 agency or instrumentality thereof, except a contract that is awarded
16 pursuant to a fair and open process, shall not make such a
17 contribution, reportable by the recipient under P.L.1973, c.83
18 (C.19:44A-1 et seq.), to any municipal committee of a political party
19 in that municipality if a member of that political party is serving in an
20 elective public office of that municipality when the contract is awarded
21 or to any candidate committee of any person serving in an elective
22 public office of that municipality when the contract is awarded, during
23 the term of that contract.

24 No such committee shall accept such a contribution from a business
25 entity during the term of its contract with the municipality.

26

27 5. (New section) When a business entity is a natural person, a
28 contribution by that person's spouse or child, residing therewith, shall
29 be deemed to be a contribution by the business entity. When a
30 business entity is other than a natural person, a contribution by any
31 person or other business entity having an interest therein shall be
32 deemed to be a contribution by the business entity.

33

34 6. (New section) As used in sections 1 through 12 of this act:
35 "business entity" means any natural or legal person, business
36 corporation, professional services corporation, limited liability
37 company, partnership, limited partnership, business trust, association
38 or any other legal commercial entity organized under the laws of this
39 State or of any other state or foreign jurisdiction;

40 "interest" means the ownership or control of more than 10% of the
41 profits or assets of a business entity or 10% of the stock in the case of
42 a business entity that is a corporation for profit, as appropriate;

43 "fair and open process" means, at a minimum, that the contract shall
44 be: publicly advertised in newspapers or on the Internet website
45 maintained by the public entity in sufficient time to give notice in
46 advance of the contract; awarded under a process that provides for

1 public solicitation of proposals or qualifications and awarded and
2 disclosed under criteria established in writing by the public entity prior
3 to the solicitation of proposals or qualifications; and publicly opened
4 and announced when awarded. The decision of a public entity as to
5 what constitutes a fair and open process shall be final.

6 "State agency in the Executive Branch" means any of the principal
7 departments in the Executive Branch of the State Government, and
8 any division, board, bureau, office, commission or other
9 instrumentality within or created by such department and any
10 independent State authority, board, commission, instrumentality or
11 agency.

12 "State agency in the Legislative Branch" means the Legislature of
13 the State and any office, board, bureau or commission within or
14 created by the Legislative Branch.

15

16 7. (New section) a. Prior to awarding any contract, except a
17 contract that is not awarded pursuant to a fair and open process, a
18 State agency in the Executive or Legislative Branches, a county, or a
19 municipality shall require the business entity to which the contract is
20 to be awarded to provide a written certification that it has not made a
21 contribution that would bar the award of a contract pursuant to this
22 act.

23 b. A business entity shall have a continuing duty to report to the
24 Election Law Enforcement Commission any contributions that
25 constitute a violation of this act that are made during the duration of
26 a contract.

27

28 8. (New section) If a business entity makes a contribution that
29 would cause it to be ineligible to receive a public contract or, in the
30 case of a contribution made during the term of a public contract, that
31 would constitute a violation of this act, the business entity may
32 request, in writing, within 60 days of the date on which the
33 contribution was made, that the recipient thereof repay the
34 contribution and, if repayment is received within those 60 days, the
35 business entity would again be eligible to receive a contract or would
36 no longer be in violation, as appropriate.

37

38 9. (New section) A business entity which is determined by the
39 Election Law Enforcement Commission to have willfully and
40 intentionally made a contribution or failed to reveal a contribution in
41 violation of this act may be liable to a penalty of up to the value of its
42 contract with the public entity and may be debarred by the State
43 Treasurer from contracting with any public entity for up to five years.

44

45 10. (New section) Any person who is determined by the Election
46 Law Enforcement Commission to have willfully and intentionally

1 accepted a contribution in violation of the provisions of sections 1
2 through 4 of this act shall be liable to a penalty for each such violation
3 equal to the penalties forth in subsection e. of section 22 of P.L.1973,
4 c.83 (C.19:44A-22).

5
6 11. (New section) Nothing contained in this act shall be construed
7 as prohibiting the awarding of a contract when the public exigency
8 requires the immediate delivery of goods or performance of emergency
9 services as determined by the State Treasurer.

10
11 12. (New section) Nothing contained in this act shall be construed
12 as affecting the eligibility of any business entity to perform a public
13 contract because that entity made a contribution to any committee
14 during the one-year period immediately preceding the effective date of
15 this act.

16
17 13. (New section) In addition to any other applicable limit
18 prescribed by law, between January 1 and June 30 of each year, a
19 county committee of a political party shall not make a contribution to
20 any other county committee of a political party, nor shall any such
21 county committee accept a contribution from any other county
22 committee during that time period. In addition to any other penalty
23 provided by law, a county committee that willfully and intentionally
24 violates this section, or willfully and intentionally makes a contribution
25 to any candidate or committee with the intent, condition,
26 understanding or belief that the candidate or committee has made or
27 shall make a contribution to another county committee, shall be liable
28 to a penalty equal to four times the amount of the contribution.

29
30 14. Section 22 of P.L.1973, c.83 (C.19:44A-22) is amended to
31 read as follows:

32 22. a. (1) Except as provided in subsection e. or f., any person,
33 including any candidate, treasurer, candidate committee or joint
34 candidates committee, political committee, continuing political
35 committee, political party committee or legislative leadership
36 committee, charged with the responsibility under the terms of this act
37 for the preparation, certification, filing or retention of any reports,
38 records, notices or other documents, who fails, neglects or omits to
39 prepare, certify, file or retain any such report, record, notice or
40 document at the time or during the time period, as the case may be,
41 and in the manner prescribed by law, or who omits or incorrectly
42 states or certifies any of the information required by law to be included
43 in such report, record, notice or document, any person who proposes
44 to undertake or undertakes a public solicitation, testimonial affair or
45 other activity relating to contributions or expenditures in any way
46 regulated by the provisions of this act who fails to comply with those

1 regulatory provisions, and any other person who in any way violates
2 any of the provisions of this act shall, in addition to any other penalty
3 provided by law, be liable to a penalty of not more than \$3,000.00 for
4 the first offense and not more than \$6,000.00 for the second and each
5 subsequent offense.

6 (2) No person shall willfully and intentionally agree with another
7 person to make a contribution to a candidate, candidate committee,
8 joint candidates committee, political committee, continuing political
9 committee, political party committee, or legislative leadership
10 committee with the intent, or upon the condition, understanding or
11 belief, that the recipient candidate or committee shall make or have
12 made a contribution to another such candidate or committee, but this
13 paragraph shall not be construed to prohibit a county or municipal
14 committee of a political party from making a contribution or
15 contributions to any candidate, candidate committee, joint candidates
16 committee, political committee, continuing political committee,
17 political party committee, or legislative leadership committee. A
18 finding of a violation of this paragraph shall be made only upon clear
19 and convincing evidence. A person who violates the provisions of this
20 paragraph shall be liable to a penalty equal to ~~[three]~~ four times the
21 amount of the contribution which that person agreed to make to the
22 recipient candidate or committee.

23 b. Upon receiving evidence of any violation of this section, the
24 Election Law Enforcement Commission shall have power to hold, or
25 to cause to be held under the provisions of subsection d. of this
26 section, hearings upon such violation and, upon finding any person to
27 have committed such a violation, to assess such penalty, within the
28 limits prescribed in subsection a. of this section, as it deems proper
29 under the circumstances, which penalty shall be paid forthwith into the
30 State Treasury for the general purposes of the State.

31 c. In assessing any penalty under this section, the Election Law
32 Enforcement Commission may provide for the remission of all or any
33 part of such penalty conditioned upon the prompt correction of any
34 failure, neglect, error or omission constituting the violation for which
35 said penalty was assessed.

36 d. The commission may designate a hearing officer to hear
37 complaints of violations of this act. Such hearing officer shall take
38 testimony, compile a record and make factual findings, and shall
39 submit the same to the commission, which shall have power to assess
40 penalties within the limits and under the conditions prescribed in
41 subsections b. and c. of this section. The commission shall review the
42 record and findings of the hearing officer, but it may also seek such
43 additional testimony as it deems necessary. The commission's
44 determination shall be by majority vote of the entire authorized
45 membership thereof.

46 e. Any person who willfully and intentionally makes or accepts any

1 contribution in violation of section 4 of P.L.1974, c.26 (C.19:44A-29)
2 or section 18, 19 or 20 of P.L.1993, c.65 (C.19:44A-11.3,
3 C.19:44A-11.4 or C.19:44A-11.5), shall be liable to a penalty of:

4 (1) Not more than \$5,000.00 if the cumulative total amount of
5 those contributions is less than or equal to \$5,000.00;

6 (2) Not more than \$75,000.00 if the cumulative total amount of
7 those contributions was more than \$5,000.00 but less than \$75,000;
8 and

9 (3) Not more than \$100,000.00 if the cumulative total amount of
10 those contributions is equal to or more than \$75,000.00.

11 f. In addition to any penalty imposed pursuant to subsection e. of
12 this section, a person holding any elective public office shall forfeit
13 that public office if the Election Law Enforcement Commission
14 determines that the cumulative total amount of the illegal contributions
15 was more than \$50,000.00 and that the violation had a significant
16 impact on the outcome of the election.

17 g. Any penalty prescribed in this section shall be enforced in a
18 summary proceeding under "the penalty enforcement law,"
19 N.J.S.2A:58-1 et seq.

20 (cf: P.L.1993,c.65,s.13)

21

22 15. This act shall take effect on January 1, 2006.

23

24

25

STATEMENT

26

27 The purpose of this bill is to reduce the risk of actual or perceived
28 corruption which may result when public contracts are awarded to
29 business entities that have contributed to elected officials having
30 control, or apparent control, over the awarding of those contracts, or
31 to political party committees at various levels of government that may
32 have influence over the officials responsible for awarding such
33 contracts, a practice commonly referred to as "pay-to-play." At the
34 same time, the bill seeks to respect campaign contributors' rights,
35 guaranteed by the First Amendment, to freedom of speech and
36 freedom of association. Thus, although the limitations imposed under
37 the bill on the ability of government contractors to contribute to
38 candidates, political party committees, and legislative leadership
39 committees may arguably infringe upon First Amendment freedoms,
40 this infringement is justified by the strong State interest in preventing
41 corruption or its appearance. In addition, the means used in this bill
42 to address the "pay-to-play" problem are tailored to avoid unnecessary
43 abridgement of First Amendment rights.

44 This bill limits the eligibility of a business entity that has contributed
45 to elected officials at the State, county, or municipal level, or to a
46 State, county, or municipal political party committee to obtain a public

1 contract from the corresponding unit of government. Specifically, it
2 provides that a State agency in the Executive Branch of State
3 Government will not enter into a contract having an anticipated value
4 in excess of \$17,500 with a business entity, except a contract that is
5 awarded pursuant to a fair and open process, if during the preceding
6 one-year period that business entity has made a contribution
7 (reportable by the recipient under "The Campaign Contributions and
8 Expenditures Reporting Act") to the State committee of the political
9 party of which the Governor, serving when the contract is awarded, is
10 a member or to any candidate committee of that Governor. In
11 addition, a business entity that enters into such a contract with a State
12 agency in the Executive Branch would be prohibited from making a
13 contribution to any of these committees during the term of the
14 contract.

15 Similar provisions applicable to State agencies in the Legislative
16 Branch of State Government would prevent the awarding of any such
17 contract, requiring approval by a presiding officer of either house of
18 the Legislature, to a business entity that has made a contribution
19 during the preceding one year period to the State committee of the
20 political party of which the presiding officer, serving when the contract
21 is awarded, is a member or to a legislative leadership committee or any
22 candidate committee established by that presiding officer. A business
23 entity performing such a contract for a State agency in the Legislative
24 Branch would be prohibited from making a contribution to any of
25 these committees during the term of the contract.

26 In addition, the bill would prohibit a county or municipality from
27 entering into a contract having an anticipated value in excess of
28 \$17,500 with a business entity, except a contract that is awarded
29 pursuant to a fair and open process, if that business entity has made
30 a reportable contribution, in the case of a county to any county
31 committee of a political party in that county if a member of that
32 political party is serving in an elective public office of that county
33 when the contract is awarded or to any candidate committee of any
34 person serving in an elective public office of that county when that
35 contract is awarded and, in the case of a municipality, to any municipal
36 committee of a political party in that municipality if a member of that
37 political party is serving in an elective public office of that municipality
38 when the contract is awarded or to any candidate committee of any
39 person serving in an elective public office of that municipality when
40 that contract is awarded. A business entity that enters into such a
41 contract with a county or municipality would be prohibited from
42 making a contribution to any of these committees during the term of
43 the contract.

44 Each of the aforesaid committees would be prohibited from
45 accepting such a contribution from a business entity during the term
46 of a contract.

1 Under the bill, when a business entity is a natural person, a
2 contribution by that person's spouse or child, residing therewith, will
3 be deemed to be a contribution by the business entity. When a
4 business entity is other than a natural person, a contribution by any
5 person or other business entity having an interest therein will be
6 deemed to be a contribution by the business entity. The bill defines
7 "interest" as the ownership or control of more than 10% of the profits
8 or assets of a business entity or 10% of the stock of a corporation for
9 profit, as appropriate.

10 The bill also provides that:

- 11 * prior to being awarded any contract, a business entity must provide
12 a written certification that it has not knowingly made a contribution
13 that would render it ineligible for a contract under the bill's
14 provisions;
- 15 * a business entity would have a continuing duty to report to the
16 Election Law Enforcement Commission (ELEC) any contributions
17 that constitute a violation of the bill that are made during the
18 duration of a contract;
- 19 * a business entity would have the opportunity to request, in writing,
20 within 60 days of the date on which the contribution was made, that
21 the recipient thereof repay the contribution, and to receive return
22 of the contribution, in order to restore its eligibility to receive a
23 contract or to correct a violation during the duration of a contract;
- 24 * a business entity determined by ELEC to have willfully and
25 knowingly made a contribution in violation of this bill would be
26 liable to a penalty of up to the value of its contract with a public
27 entity and may be debarred by the State Treasurer from contracting
28 with any public entity for up to five years;
- 29 * any person determined by ELEC to have willfully and knowingly
30 accepted a contribution in violation of the bill's provisions would be
31 liable to the penalties provided in current law for campaign
32 contribution violations;
- 33 * contributions made prior to the bill's effective date would not affect
34 the eligibility of any business entity to perform a public contract;
- 35 * nothing contained in the bill would be construed as prohibiting the
36 awarding of a contract when the public exigency requires the
37 immediate delivery of the articles or performance of emergency
38 services as determined by the State Treasurer; and
- 39 * its provisions would take effect on January 1, 2006.

40 In addition, the bill contains an "anti-wheeling" provision that
41 prohibits a county committee of a political party from making a
42 contribution to any other county committee between January 1 and
43 June 30 of each year. The penalty for violating this provision would
44 be four times the amount of the contribution. The bill also increases
45 the penalty (from three to four times the amount of the contribution)

A2 WEINBERG

11

- 1 for agreeing to make a contribution to another person with the
- 2 understanding that the person will make a contribution to a candidate
- 3 or committee.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2

STATE OF NEW JERSEY

DATED: JUNE 3, 2004

The Assembly State Government Committee reports favorably Assembly, No. 2.

This bill limits the eligibility of a business entity that has contributed to elected officials at the State, county, or municipal level, or to a State, county, or municipal political party committee, to obtain a public contract from the corresponding unit of government. Specifically, it provides that a State agency in the Executive Branch of State Government will not enter into a contract having an anticipated value in excess of \$17,500 with a business entity, except a contract that is awarded pursuant to a fair and open process, if during the preceding one-year period that business entity has made a contribution (reportable by the recipient under "The Campaign Contributions and Expenditures Reporting Act") to the State committee of the political party of which the Governor, serving when the contract is awarded, is a member or to any candidate committee of that Governor. In addition, a business entity that enters into such a contract with a State agency in the Executive Branch would be prohibited from making a contribution to any of these committees during the term of the contract.

Similar provisions applicable to State agencies in the Legislative Branch of State Government would prevent the awarding of any such contract, requiring approval by a presiding officer of either house of the Legislature, to a business entity that has made a contribution during the preceding one year period to the State committee of the political party of which the presiding officer, serving when the contract is awarded, is a member or to a legislative leadership committee or any candidate committee established by that presiding officer. A business entity performing such a contract for a State agency in the Legislative Branch would be prohibited from making a contribution to any of these committees during the term of the contract.

In addition, the bill would prohibit a county or municipality from entering into a contract having an anticipated value in excess of \$17,500 with a business entity, except a contract that is awarded pursuant to a fair and open process, if that business entity has made a reportable contribution, in the case of a county, to any county committee of a political party in that county if a member of that political party is serving in an elective public office of that county

when the contract is awarded or to any candidate committee of any person serving in an elective public office of that county when that contract is awarded, and, in the case of a municipality, to any municipal committee of a political party in that municipality if a member of that political party is serving in an elective public office of that municipality when the contract is awarded or to any candidate committee of any person serving in an elective public office of that municipality when that contract is awarded. A business entity that enters into such a contract with a county or municipality would be prohibited from making a contribution to any of these committees during the term of the contract. Each of the aforesaid committees would be prohibited from accepting such a contribution from a business entity during the term of a contract.

Under the bill, when a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, will be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein will be deemed to be a contribution by the business entity. The bill defines "interest" as the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock of a corporation for profit, as appropriate.

The bill also provides that:

- * prior to being awarded any contract, a business entity must provide a written certification that it has not knowingly made a contribution that would render it ineligible for a contract under the bill's provisions;
- * a business entity would have a continuing duty to report to the Election Law Enforcement Commission (ELEC) any contributions that constitute a violation of the bill that are made during the duration of a contract;
- * a business entity would have the opportunity to request, in writing within 60 days of the date on which the contribution was made, that the recipient thereof repay the contribution, and to receive a return of the contribution, in order to restore its eligibility to receive a contract or to correct a violation during the duration of a contract;
- * a business entity determined by ELEC to have willfully and knowingly made a contribution in violation of this bill would be liable to a penalty of up to the value of its contract with a public entity and may be debarred by the State Treasurer from contracting with any public entity for up to five years;
- * any person determined by ELEC to have willfully and knowingly accepted a contribution in violation of the bill's provisions would be liable to the penalties provided in current law for campaign contribution violations;
- * contributions made prior to the bill's effective date would not affect the eligibility of any business entity to perform a public

contract;

- * nothing contained in the bill would be construed as prohibiting the awarding of a contract when the public exigency requires the immediate delivery of the articles or performance of emergency services as determined by the State Treasurer; and
- * its provisions would take effect on January 1, 2006.

In addition, the bill contains an "anti-wheeling" provision that prohibits a county committee of a political party from making a contribution to any other county committee between January 1 and June 30 of each year. The penalty for violating this provision would be four times the amount of the contribution. The bill also increases the penalty (from three to four times the amount of the contribution) for agreeing to make a contribution to another person with the understanding that the person will make a contribution to a candidate or committee.

This bill is the same as Senate, No. 2 of 2004.

MINORITY STATEMENT Submitted by Assemblyman Carroll

This bill is worse than no bill at all because it purports to deliver reform while in fact it leaves the status quo almost entirely intact. This is not a "good first step," it is a sham.

The bill allows the practice known as "wheeling" to continue unabated during general elections. Thus under this bill, as currently, huge sums of money can be transferred around the state to finance late negative attack ads.

The bill also effectively allows a public entity to exempt itself from pay-to-play reform by declaring itself to have a "fair and open" process for the awarding of contracts, and that declaration is considered final under the terms of the bill. Furthermore, the entity's contracting process need not require the selection of the lowest bidding responsible bidder in order to be declared "fair and open." The bill also fails to address the potential influence of a political contribution on decisions regarding contracts already awarded, such as change orders, which can have lucrative implications for contractors.

Finally, the bill makes no attempt to close an obvious route of evasion that can be used by those wishing to avoid the weak restrictions provided in the bill. Coordination of activity between municipal, county, and state committees of the same political party would allow a contractor to make contributions to party committees on the county level in order to influence the awarding of a contract on the state or municipal level, for example.

This committee egregiously erred in defeating strong and effective pay-to-play reform of the type passed unanimously by the Senate last year, and instead moving this sham bill to the floor.

Office of the Governor

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Contact: Micah Rasmussen
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RELEASE: June 16, 2004

McGreevey Signs Landmark Ethics Reform Legislation

Bills Provide A More Accountable and Transparent Government

(TRENTON) – Governor James E. McGreevey today signed into law the strongest ethics and campaign finance reform package in the history of New Jersey – and one of the strongest in the nation.

“Today is a good day for government and a victory for our citizens,” said Governor McGreevey. “From the stronger penalties, to the increased disclosure, to the end of the influence of campaign contributions on no-bid contracts, this reform package provides a more accountable and more transparent government for all. I want to congratulate the citizens, the State Legislature, and the numerous advocacy groups who helped make these reforms a reality.”

The legislation is the most comprehensive ethics and campaign finance reform initiative the State has embarked upon in more than 30 years and makes New Jersey only the fourth state in the entire country to enact a “pay-to-play” ban.

"The numerous positive achievements in this legislation clearly demonstrate how Democrats have seized the initiative on ethics reform," said Senate Majority Leader Bernard F. Kenny Jr. (D-Hudson). "As the Majority Party, Democrats have acted to put us in the right direction after years of inaction by the Republicans. The reforms enacted today are long overdue, but they mark the beginning - not the end - of our commitment to eliminate any perception that those who give the most to political campaigns get favored treatment in the form of lucrative State contracts."

Among the reforms the package are: prohibiting anyone who receives a no-bid contract from making certain political contributions; strengthening legislative ethics; enhancing reporting of legislators' financial disclosure requirements, hidden financial interests, and

conflicts of interests; increasing penalties for ethics and campaign finance violations and for illegally soliciting campaign contributions; and expanding the definition of lobbyist and legislative agent, ensuring that all parties who seeks to influence government are properly disclosed.

One of the main components of the ethics reform package is S-2/A-2, which prohibits state, county or local government officials from awarding no-bid contracts to their campaign contributors and prohibits no-bid contract holders from contributing to officials holding office at the government level in which the contract is in effect.

“This has been a long and winding journey, but today New Jersey sets an unprecedented standard for disclosure and transparency, and takes significant steps to reduce the influence of money in politics,” said Governor McGreevey. “We should be proud of the example New Jersey has set for the rest of the nation, but we must also continue to work together to uphold the highest standards of ethical conduct.”

The ethics reform package signed into law today includes:

- **S-2** -- Prohibits campaign contributions by certain business entities performing State, county and local contracts, as well as prohibits certain contributions by county committee of political party.
- **S-4** -- Extends certain financial disclosure requirements to lobbying conducted through advertisements and direct mail to general public.
- **A-5** -- Change the minimum contribution that needs to be reported to the Election Law Enforcement Commission (ELEC) from \$400 to \$300 and requires the reporting of all cash campaign contributions.
- **A-6** -- Requires professional campaign fundraisers to register and file quarterly reports with ELEC.
- **A-7** -- Expands campaign communications require identification to include telephone calls featuring recorded messages made in regard to candidates and public questions. The message or call would clearly state the name of business or address of the committee, group or person that financed the communication.

"Just as voters have a right to know who is sending them campaign literature, New Jerseyans should see who is behind commercials or advertisements calling for action on a specific bill or regulation under consideration," said Assemblywoman Linda Greenstein (D-Mercer/Middlesex). "Issue ads are nothing more than thinly-veiled political campaign commercials, and all money spent on them should be publicly disclosed."

- **S-8** -- Prohibits the solicitation or making of political contributions on state property by state officeholders or their representatives.

- **A-9** -- Requires Election Law Enforcement Commission (ELEC) to assess its Internet site and recommend improvements for the site's format and content. ELEC) would evaluate the presentation, accessibility, convenience, and usefulness of its Web site and recommend upgrades.
- **S-10** -- Requires certain campaign and organizational treasurers to be trained by ELEC. It also requires ELEC to make the training program available over its Internet site within one year of the bill's enactment.
- **A-11** -- Increases the maximum fines for violating campaign contribution and expenditure limit, reporting requirements and payment restrictions. The bill doubles the maximum fines that may be imposed for a variety of violations.
- **A-12** -- Requires certain election committees/ joint candidates committees to file a report with ELEC within 48 hours of making certain expenditures in excess of \$800 during certain periods of an election cycle.
- **A-14** -- Blocks legislators, Governor and department heads from lobbying activities for one year after leaving office.

"The strong link between government service and private lobbying creates - at a minimum - an appearance of impropriety in the eyes of the public," said Assemblyman Michael J. Panter (D-Monmouth/Mercer). "It also creates the very real possibility that the judgment of an elected or appointed official could be affected by their own financial concerns rather than the public's best interest. The signing of this bill today represents a new era in New Jersey politics, and a step in the right direction toward good government."

- **A-15** – Prohibits employment or assignment of relatives of certain employees of the Executive Branch, independent authorities, and interstate agencies to specific positions. Expands upon last year's nepotism ban by extending the definition of immediate family and including certain Executive Branch departments and commissions.
- **S-16** – Bans any member of the Legislature from acting on legislation in which they or their family member has a personal interest. The bill eliminates the option of filing a personal interest statement and instead prohibits the member from acting on legislation that they have a personal interest.
- **S-17**-- Changes memberships of Executive Commission on Ethical Standards and Joint Legislative Committee on Ethical Standards. The changes equalize the number of public and governmental official members.
- **S-18** -- Increases monetary penalties for violations of "New Jersey Conflicts of Interest Law." The bill increases the fine for civil violations of the conflict of interest laws to between \$500 and \$10,000 for State officers and employees or

members of the Legislature.

- **S-19**-- Requires candidates seeking office of Governor or legislator to disclose prior conviction for criminal offense. Candidates would be required to file a form setting out whether they have been convicted of an indictable crime.

"As legislators, we often consider measures that would require members of the public to undergo criminal background checks or disclose criminal histories prior to consideration for employment," said Assemblyman Jeff Van Drew (D-Cape May). "However, current state law fails to require state elected officials to disclose similar backgrounds. This is more than a statutory anomaly. It is an error in need of immediate correction."

- **S-22** -- Expands the definition of lobbyist and legislative agent to include those who influence the governmental process and actions in the Executive Branch, agency, or instrumentality.
- **A-23** -- Requires ELEC to conduct random audits of records kept by legislative agents. Currently, ELEC has the authority to conduct such audits, but this bill would require them to do so.
- **A-24** -- Directs ELEC to collect \$100 annual fee from legislative agents. The fee would be deposited in the general fund to be appropriated to ELEC. The fee would offset the costs of ELEC's new responsibilities.
- **A-25** -- Prohibits legislative agents from accepting contingency fees to influence legislation or regulations. This bill amends the existing law by eliminating the ability of a legislative agent to enter into a contingency fee agreement with a client. The legislative agent's reimbursement could not be dependent upon the whether or not he or she was successful in trying to influence legislation or regulation.

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